§ 230.156

17 CFR Ch. II (4–1–10 Edition)

(a) Under the federal securities laws, including section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) and section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and Rule 10b–5 thereunder (17 CFR part 240), it is unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to use sales literature which is materially misleading in connection with the offer or sale of securities issued by an investment company. Under these provisions, sales literature is materially misleading if it: (1) Contains an untrue statement of a material fact or (2) omits to state a material fact necessary in order to make a statement made, in the light of the circumstances of its use, not misleading.

(b) Whether or not a particular description, representation, illustration, or other statement involving a material fact is misleading depends on evaluation of the context in which it is made. In considering whether a particular statement involving a material

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§ 230.157 Small entities under the Securities Act for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term small business or small organization shall:

(a) When used with reference to an issuer, other than an investment company, for purposes of the Securities Act of 1933, mean an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and that is engaged or proposing to engage in small business financing. An issuer is considered to be engaged or proposing to engage in small business financing under this section if it is conducting or proposes to conduct an offering of securities which does not exceed the dollar limitation prescribed by section 3(b) of the Securities Act.

(b) When used with reference to an investment company that is an issuer